

13 Permit Revisions and Incidental Boundary Revision

C O N T E N T S

Permit Revisions	
Addendum to Permit Revision.....	
IBR Acreage Limitations.....	

SUBJECT:	Permit Revisions
DATE:	March 1997

Revisions to an existing permit shall be submitted to the regional office. Applicant shall submit the section of the Surface Mining Application (MR-4) being revised along with the MR-4PR. The Permit Supervisor shall make a determination if the revision is “significant” or “insignificant” based on the criteria contained in the regulations.

Permit Supervisor shall:

- Assign application to Permit Review Team
- Make a determination if the revision is “significant” or “insignificant” based on the criteria contained in the regulations
- If revision is “significant”, specific government agencies must be notified
- Determine if NPDES, PHC, CHIA, etc. need to be revised, updated, etc.
- Determine if SHPO is required

After application is deemed technically complete and public comment has expired, the Permit Supervisor shall:

- Prepare a written narrative addressing the required findings
- Address comments and hold informal conference (if requested)
- Make decision to issue or deny

If application is denied, Permit Supervisor shall:

- Prepare denial letter
- Prepare written findings
- Retain original application and return remaining copies, denial letter and written findings to applicant

If application is issued, Permit Supervisor shall:

- Prepare approval letter
- Prepare narrative
- Forward original application and approval information to headquarters.

Examples of Significant Revision

- ◆ Alternative postmining land use
- ◆ Change in underground mining area to include or add mining of reserves underneath dwellings, structures, perennial or intermittent streams. (*Gas lines excluded if stated in lease or other documentation.*)
- ◆ Change in underground mining area to include or add mining of reserves in or underneath a watershed not addressed in the original application
- ◆ Method of mining is changed to include augering or another mining method
- ◆ Addition of fly ash for any purpose other than a soil amendment
- ◆ Disposal of tires generated on site (*one time, ten-day advertisement*)
- ◆ Add refuse to any permit not originally approved with refuse disposal

Examples of Insignificant Revision

- ◆ Sewage sludge or fly ash as soil amendment
- ◆ Change in method of operation
- ◆ Change in mining and reclamation plan (*unless mining type change*)
- ◆ Changes in drainage control (*unless under dam control*)
- ◆ Changes in drainage plan
- ◆ Changes to backfilling and regrading plan (*unless variance required*)
- ◆ Changes to revegetation plan
- ◆ Changes to haulroads, access roads, or other transportation facilities
- ◆ Expansion of underground mining area (*except those listed as “significant”*)

*NOTES: Minor changes to drainage structures **do not** require revision, but may be treated as “as-built” certification.*

All of the above revision examples assume the changes are within the permit boundaries.

Incidental Boundary Revision “IBR”**Examples of significant IBR**

- ◆ Disturbance within 100 feet of right of way of public road (*except where mine access road joins right of way*)
- ◆ Disturbance in new drainage area or watershed
- ◆ Opening in different drainage even within original mine development area, i.e. populated area, recreational area, etc.

Examples of insignificant IBR

- ◆ Geologic variations requiring a shift in boundary (*except those listed as significant*)
- ◆ Relocation of portal adjacent to original opening if within same mine development area
- ◆ New opening in remote area (*must address PHC for new watershed*)

IBR's may be approved for:

- ◆ Add and delete to add mineral in valley fill where coal will be covered
- ◆ Add and delete to add mineral where geologic variations occur (*changes in dip, etc.*)
- ◆ Punch outs from an underground mine required for production
- ◆ Punch ins allowed only if the original portals need to be moved because of problems or if incidental or of secondary consideration, i.e. belt coal to different mines.

IBR's may not be approved for:

- ◆ adding a coal seam not included in the original permit unless it is incidental to other construction valley fills, ponds, etc.

Note: Punching out of a mountain and punching into a different mountain will require a new permit application.

**Department of Environmental Protection
Division of Mining and Reclamation
Permitting**

MR 2B

4/95; 4/86

APPLICANT: _____ PERMIT NO. _____

ADDENDUM TO PERMIT OR SIGNIFICANT REVISION OF A PERMIT

The Secretary of the West Virginia Department of Environmental Protection has found that the following applies to the significant revision of this permit:

1. The revision is accurate and complete and all of the requirements of Article 3, Chapter 22 and the Regulation have been complied with.
2. The applicant has demonstrated that reclamation as required by Article 3, Chapter 22 can be accomplished under the reclamation plan contained in the revision.
3. An assessment of probably cumulative impact of all anticipated mining in the area on the hydrologic balance has been made by the Secretary and the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.
4. The area proposed to be mined is not included within an area designated/or under consideration of unsuitable for surface mining and is not within an area under administrative study by the Department of Environmental Protection for such designation.
5. The proposed surface mining will not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973 (16 U.S.C. 1531 et.seq.).
6. The applicant or the operator, if other than the applicant, does not control or has not controlled mining operations with a demonstrated pattern of willful violations of the Sate Code of such nature and duration with such irreparable damage to the environment as to indicate an intent not to comply with the provisions of the Code.

7. The permittee shall conduct its operations:
- A. in accordance with any measures specified in the permit as necessary to prevent significant, imminent environmental harm to the health or safety of the public;
 - B. utilizing any methods specified in the permit by the Secretary in approving alternate methods of compliance with the performance standards of the Code and the federally approved regulatory program.

In addition, the following has been found to apply to this application:
The remainder of the Subsidence Control Plan for underground mines has been waived because it has been determined from the SCP Survey approved that no material damage of diminution of value or foreseeable use of the land could be caused by subsidence.

_____ Approved

_____ N/A

Approved by: _____ **Date** _____

SUBJECT:	Incidental Boundary Revision (IBR) Limitations	
DATE:	November 22, 1994	REVISED: September 2, 1999

It has recently come to my attention that there may be some confusion concerning the interpretation of 38-2-3.29(b)(2) of the West Virginia Surface Mining Reclamation Regulations as it relates to a mining operation exceeding the established IBR acreage limitations. The provision states:

“For purpose of surface mining operations, the maximum total acreage to be permitted under one or more IBR(s) shall not exceed twenty (20) percent of the original permitted acreage or a maximum of fifty (50) acres, whichever is less, throughout the life of the permit. Acreage limitation for IBR(s) on underground mining operations shall be limited to one hundred fifty (150) percent of the original permitted acreage or a maximum of fifty (50) acres, whichever is less, throughout the life of the permit; Provided, that the Secretary may grant a waiver specifying larger acre limits where the applicant demonstrates that the nature and complexity of the operation clearly requires more than fifty (50) acres for additional facilities to include but not be limited to site development, air shafts, fan ways, vent holes, roads, staging areas, etc.”

The question has arisen as to which types of operations can be granted a waiver as provided for under this regulation. It is the position of this agency that this waiver may only be considered for underground mining operations and those refuse disposal or preparation operations where the activity directly facilitates these operations. Furthermore, the provision at 38-2-3.29(e) shall be required of the permittee when an IBR application request this waiver.